

***United States Court of Appeals
for the Second Circuit***

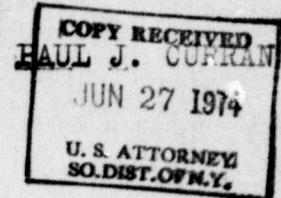


**APPELLANT'S
BRIEF**

74-1678

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To be argued by
SANDOR FRANKEL



IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

PHILIP ZANE, JEROME E. SILVERMAN, and
ROBERT S. PERSKY,

Defendants-Appellants,

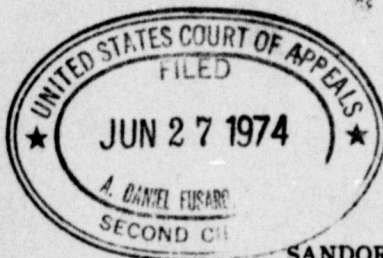
—and—

MORTON S. KAPLAN, CHARLES FISCHER, RAMON N.
D'ONOFRIO, and U. S. SECRETARIAL INSTITUTE, LTD.,

Defendants.

On Appeal from a Denial of a Motion for a New Trial by
the United States District Court for the Southern
District of New York

**BRIEF ON BEHALF OF APPELLANTS PHILIP
ZANE AND JEROME E. SILVERMAN**



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA,	:	
Plaintiff-Appellee,	:	
-against-	:	
PHILIP ZANE, JEROME E. SILVERMAN,	:	
and ROBERT S. PERSKY,	:	
Defendants-Appellants,	:	Docket No. 74-1678
-and-	:	
MORTON S. KAPLAN, CHARLES FISCHER,	:	
RAMON N. D'ONOFRIO, and U. S.	:	
SECRETARIAL INSTITUTE, LTD.,	:	
Defendants.	:	
	:	
----- X		

BRIEF FOR APPELLANTS ZANE AND SILVERMAN

ISSUE PRESENTED

Are appellants entitled to a new trial based on newly discovered evidence and in the interests of justice where one of the Government's two principal witnesses against them, who was portrayed to the jury by himself and by the Government as being a reformed and repentant man ready to

start a new and honest life and to suffer appropriate punishment for his previous crimes, pleads guilty shortly after testifying against appellants to six counts of an indictment charging in substance that shortly after his testimony against appellants and in support of a motion for reduction of his own sentence, he caused the submission of numerous false, forged, fraudulent and fictitious letters to a United States District Judge in an attempt to obstruct the lawful governmental functions of the United States District Court for the Southern District of New York?

STATEMENT OF PROCEEDINGS

This is an appeal from an order of the United States District Court for the Southern District of New York denying a motion by appellants Zane and Silverman for an order, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, granting them a new trial on the grounds of newly discovered evidence and in the interests of justice.

Appellants Zane and Silverman, accountants charged in thirteen counts of an indictment for offenses arising out of their alleged participation in a conspiracy to file a false Form 10-K with the Securities and Exchange Commission ("S.E.C."),

were acquitted on nine counts, including the conspiracy count, and convicted on one count apiece (the jury being unable to render a verdict on two counts) after a five-week trial before the Hon. Inzer B. Wyatt. By opinion dated April 1, 1974 (Docket Nos. 73-2401, 73-2450), their convictions were affirmed by the United States Court of Appeals for the Second Circuit (per the Hon. Walter R. Mansfield, the Hon. J. Edward Lumbard, and the Hon. Murray I. Gurfein). A timely petition for rehearing with a suggestion for hearing en banc was denied by this Court by order dated May 15, 1974. This Court stayed issuance of the mandate pending application to the Supreme Court of the United States for a writ of certiorari, which has since been filed with and is presently pending before that Court.

Subsequent to the opinion of this Court on the original appeal in this case, appellants Zane and Silverman filed a motion for a new trial in the United States District Court for the Southern District of New York, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, for reasons hereinafter set forth. On April 26, 1974, appellants' motion for a new trial was denied after oral argument by the Hon. Inzer B. Wyatt. Judge Wyatt rendered an oral opinion from the bench (see A*2-A4).

* The letter "A" followed by a number designates page reference to appellants' Appendix.

Appellants were released on personal recognizance pending this appeal from the District Court's denial of the motion for new trial. A timely notice of appeal from the District Court's order denying the motion was filed on May 6, 1974.

FACTUAL BASIS FOR THIS APPEAL

As indicated in the Government's appellate brief on the original appeal in this case (at p. 3), as noted in the opinion of the Court of Appeals (at Sl. Op. 2499), and as reflected in the 416 transcript pages of his trial testimony, Akiyoshi Yamada was one of the Government's two main witnesses in this prosecution (the other being John P. Galanis). Yamada's testimony bore strongly and directly on Count 2, the only count of a total of thirteen charged against appellants Zane and Silverman as to which they were convicted. Yamada testified, inter alia, that the reason for Morton Kaplan's changing Microthermal's accountants from Arthur Andersen to Zane and Silverman was because Arthur Andersen had refused to certify the financial statement made part of Microthermal's Form 10-K; that Burns had Zane and Silverman "in his hip pocket" and, for money, Zane and Silverman would be "cooperative"; that Zane and Silverman had agreed not to physically look at the purported CDs in question; that Zane and Silverman were present at the

alleged "Rozzo" meeting at which the non-existence of the CDs was allegedly discussed in their presence and in which the inadequacy of the May 14 letter from the Franklin National Bank was allegedly discussed in their presence (T. Tr.* 1553, 1560-1572). Each aspect of Yamada's testimony, if accepted by the jury, would have suggested an awareness on the part of Zane and Silverman of the false nature of the financial statement they certified, even if not their participation in the conspiracy, which was a possible explanation suggested by the Court of Appeals' opinion (at Sl. Op. 2505) for the otherwise apparently inconsistent verdict of the jury.

Yamada, during the course of his trial testimony, admitted to the commission of numerous securities frauds, all of which were committed before he struck his deal with the Government and became a cooperating witness. In addition, he had continually committed perjury while testifying for four and one-half days before the S.E.C. Yamada agreed to plead guilty to three one-count informations before a single judge, with the Government's commitment that he would not be prosecuted for any other offenses. He had not yet been sentenced at the time he testified at appellants' trial, although he had learned

* "T. Tr." followed by a number designates page reference to the trial transcript.

of the lenient (six months plus probation) sentence that his partner in crime, Galanis, had received (T. Tr. 1574-1589, 1594-1596, 1599-1606, 1686-1680).

Subsequent to appellants' trial, Yamada was indicted by a grand jury in the Southern District of New York on sixteen counts (74 Cr. 100). In substance, the indictment alleged that Yamada was sentenced (shortly after his testimony and the jury's verdict in the prosecution of appellants) by the Hon. Irving Ben Cooper to two years' imprisonment, five years' probation, and a \$30,000 fine for the various offenses to which Yamada had pleaded guilty as part of his agreement with the Government. The indictment alleged that for the next seven weeks after his sentencing, Yamada engineered and perpetrated a scheme to defraud Judge Cooper "by submitting false, forged, fictitious and fraudulent documents and information to the Court" in connection with his subsequent motion before Judge Cooper for reduction of sentence. To effect this scheme, Yamada was alleged to have caused the sending of numerous letters to Judge Cooper, by various individuals purportedly active in community services, attesting to Yamada's fine character and previous good deeds, and purportedly requesting that leniency be extended by the Court to Yamada. These

letters, according to the indictment, were false, forged, and, in at least one instance, typed on stationery whose printing Yamada caused and which bore the name of a non-existent institution. A simple reading of the indictment indicates that Yamada's scheme as charged was an elaborate and brazen series of complete lies and fabrications to a United States District Judge in an effort by Yamada to obtain leniency for himself, at whatever cost.

On April 15, 1974, Yamada entered a plea of guilty to Counts 6 and 12-16 of Indictment 74 Cr. 100. In substance, the conspiracy count (Count 6) to which Yamada pleaded guilty charged him with having conspired with others, for a fifty-day period beginning about a month after his testimony in appellants' trial, to defraud the United States and Judge Cooper in Judge Cooper's official capacity as a United States Senior District Judge for the Southern District of New York by submitting false, forged, fictitious, and fraudulent documents in support of his motion for reduction of sentence; Counts 12-16, to which Yamada also pleaded guilty, charged him with five substantive offenses of knowingly and wilfully submitting false, fictitious and fraudulent statements to Judge Cooper in support of his motion for reduction of sentence.

Yamada, before testifying at appellants' trial, had previously testified under oath before the S.E.C. with respect to the same matters about which he testified at trial. His testimony before the S.E.C. differed substantially from his testimony at appellants' trial, and the jury was faced with the issue of whether he had perjured himself before the S.E.C. (as Yamada and the Government claimed) or was perjuring himself at trial (as appellants claimed) (see this Court's opinion, at Sl. Op. 2513-2515).

To assist the jury in resolving this issue against Zane and Silverman, Yamada was pictured by himself and by counsel for the Government as being a man who, having violated the laws, was now repentant, entirely credible, and ready to tell the truth and bear whatever punishment was necessary for his previous offenses in order to face life with a fresh start. Government counsel, even before Yamada testified, said in his opening statement to the jury, "Yamada stepped forward and said 'I did these things and I want to pay for these things'" (T. Tr. 58). Indeed, Government counsel in his opening statement anticipated cross-examination by defense counsel into Yamada's deal with the Government by characterizing any such inquiry as "a tremendous amount of wind and air." (T. Tr. 57).

Yamada himself testified, "I agreed to tell the absolute truth I was going to start anew, and start a new life" (T. Tr. 1577). Government counsel, in summation, claimed that the Government's cooperating witnesses (including Yamada), in this and in others of "these financial cases," "finally said, 'Enough, I want to tell the truth;'" (T. Tr. 4009-4010), and that Yamada "was honest" and his testimony had "the hallmarks of credibility" (T. Tr. 4015).

As Yamada's recent convictions clearly establish, the picture of Yamada which the Government painted at appellants' trial was entirely false; to the contrary, a grand jury painted Yamada as a liar, and his plea of guilty to six counts of the indictment confirmed the grand jury's allegation and absolutely refuted the claim made by the Government at trial that Yamada was a man worthy of any belief or one whose testimony was worthy of any credence. Moreover, Yamada's guilty plea to six counts furnished unmistakable and overwhelming evidence--unavailable at trial--of the lengths to which Yamada would lie and construct a web of total deceit in order to alleviate his own problems with the law.

In this respect, the Government's position with respect to Yamada's sentencing on the six counts to which he

pleaded guilty in 74 Cr. 100 is of extreme significance. The Government submitted a sentencing memorandum* to the Hon. Morris E. Lasker (to whom 74 Cr. 100 had been assigned) which not only urged Judge Lasker to impose a severe punishment on Yamada, but additionally characterized Yamada's activities in terms which clearly warrant the granting of a new trial in the instant case. The Government's memorandum stated that the crimes (committed within a short time of his testimony at appellants' trial) "are matters of the utmost gravity which . . . require a stern response by the Court", and the Government urged that Yamada "should be punished by a substantial term of imprisonment consecutive to the term which [Yamada] is presently serving" (A52, A67). The Government also stated in its sentencing memorandum that "in addition to the letters set forth in the indictment, the Government would have proven [at trial] that Yamada solicited additional fake letters" (A60).

On May 20, 1974, Judge Lasker sentenced Yamada on Indictment 74 Cr. 100 to a term of one year's imprisonment, noting that "I have the power to reduce the sentence for four months hereafter and if your record continues to be as well

* The Government's sentencing memorandum in Yamada's case is reprinted in its entirety at A51-A67.

thought of at the end of that period as it now is, I will entertain a motion for reduction and would expect to grant a very substantial reduction of the one-year sentence that I am imposing at the present time." (A49).

ARGUMENT

THE DISTRICT COURT ERRED IN DENYING APPELLANTS' MOTION FOR A NEW TRIAL

It is respectfully submitted that under the principles established in Mesarosh v. United States, 352 U.S. 1 (1956), the District Court erred in denying the motion of appellants Zane and Silverman for a new trial.

In Mesarosh, petitioners were convicted of a Smith Act violation. While the appeal was pending before the Supreme Court of the United States, the Solicitor General called the Supreme Court's attention to the fact that "the Government, on the information in its possession, now has serious reason to doubt the truthfulness of" testimony given in other judicial proceedings by one of the seven witnesses who had testified against petitioners (352 U.S. at 4). The Solicitor General stated, however, that the Government's position was still that the testimony of the witness given at petitioners' trial "was

entirely truthful and credible" (352 U.S. at 4). Under these circumstances, the Supreme Court held:

"[The witness]'s credibility has been wholly discredited by the disclosures of the Solicitor General. No other conclusion is possible. The dignity of the United States Government will not permit the conviction of any person on tainted testimony. This conviction is tainted, and there can be no other just result than to accord petitioners a new trial." 352 U.S. at 9.

The circumstances of the instant case are even more compelling than those of Mesarosh. In Mesarosh, the Government's witness was discredited only by the Solicitor General's assertion, but not by any conviction, whereas in the instant case Yamada has pleaded guilty to six separate crimes constituting a blatant, flagrant, and premeditated series of lies and fabrications to a Federal District Judge. Yamada's crimes followed his testimony at trial by only a matter of weeks. Moreover, in Mesarosh, the Solicitor General "was not prepared to say the witness . . . was guilty of perjury" (352 U.S. at 8), whereas Yamada's newest crimes are unequivocal proof of Yamada's lies.

Yamada's new convictions are relevant to his credibility not only in the narrow sense that any conviction of a crime bearing on veracity is relevant (cf. United States v.

Palumbo, 401 F.2d 270 (2d Cir. 1968), cert. denied 394 U.S. 94); more significantly, under the circumstances of the instant case Yamada's crimes against the Court are intimately connected with the primary issue of his motivation to lie at the trial of Zane and Silverman. The jury in this case had to evaluate the extent to which Yamada would lie in order to lessen his own punishment. Yamada's newest crimes constitute overwhelming proof that Yamada, even after having purportedly turned over a new leaf and having become an honest man, so deeply wished to escape punishment that he would create an absolutely fictitious series of lies and deceptions towards this end, even to the extent of violating the sanctity of a Federal Court. The picture of Yamada which was painted at trial as that of a repentant man who had decided to tell the truth and bear his punishment was, in a word, untrue.

Moreover, Yamada's guilty pleas are firm evidence that he would not and did not live up to his bargain with the Government. He testified at trial that pursuant to his bargain with the Government "I agreed to tell the absolute truth" and that he intended to live up to his agreement (T. Tr. 1577). However, as the Government's sentencing memorandum before Judge Lasker states, "the very crimes which are the subject of the

instant charges demonstrate that Yamada violated his agreement with the Government almost as soon as he had made it" (A61). In fact, Yamada's violation of his agreement with the Government was so flagrant that the Government "considered prosecuting this defendant for his various unprosecuted frauds" which the Government had previously agreed not to prosecute (A61).

The District Court, in denying appellants' motion for a new trial, relied for its holding on the assertion that Yamada's new crimes "seem to me to be cumulative on impeaching his credibility", for the reason that the scope of Yamada's previous criminal offenses had been brought to the jury's attention during the course of appellants' trial (A2-A4). Notwithstanding this rationale of the District Court, however, it is respectfully submitted that Yamada's new crimes are not simply cumulative to his other crimes.

Yamada's new convictions are not "cumulative" to the evidence of his other crimes because there was absolutely no evidence that he had been convicted of any other crime or had committed or contemplated any other misconduct after having allegedly turned over a new leaf; nor was there any evidence adduced at trial that he had made any other false statements

after having allegedly reformed himself; certainly there was no admission from Yamada as to any instance of his having wilfully made material false statements after his purported reformation. The picture of Yamada painted by the Government at trial was that of a man who, having made his bargain with the Government around mid-1972, was a truth-telling man who by the time of trial had reformed and was worthy of belief; the thrust of appellants' defense to Yamada's testimony was that he was motivated to testify as he did by an eagerness to extend the scope of his "cooperation" with the Government and thereby reduce the scope of his own punishment for his previous offenses. The prosecution's portrayal of a reformed Yamada turned out to be blatantly untrue, as Yamada's new crimes established him to be a criminal so desperate to mitigate his own punishment as to be willing to fabricate any series of lies no matter how outrageous or how fictitious so long as those lies were perceived by Yamada to be helpful to himself. Yamada himself, at his sentencing before Judge Lasker, finally admitted the depths of his desperation: ". . . I was irrational of every conceivable fear concerning prison life . . ."

(A45).

Indeed, the District Court itself, in denying appel-

lants' motion for a new trial, conceded that Yamada had been portrayed by both himself and the Government at appellants' trial as being a repentant man now worthy of belief. As the District Court acknowledged in its oral opinion denying the motion for a new trial:

"[C]ounsel for the defendants are right in saying that as of the time of trial he was saying in substance that he had reformed, and was then telling the truth" (A3)

The Court's own questioning of Yamada during the trial highlighted this; when counsel for appellants Zane and Silverman confronted Yamada with a portion of Yamada's S.E.C. testimony which was inconsistent with Yamada's trial testimony, the following colloquy occurred between the Court and Yamada:

"Q Was that at a time when you were giving false answers to the S.E.C.?

A That is correct." (T. Tr. 1630)

That the picture of a reformed Yamada painted by the Government at appellants' trial was untrue is further borne out by Yamada's sentencing proceedings before Judge Lasker. There, Yamada's counsel, in Yamada's presence, stated:

"Of critical importance is the fact that the crimes committed to which he stands sentenced today all occurred all prior to his imprisonment in Allenwood [which was subsequent to Yamada's testimony at appellants' trial]. I respectfully submit to this Court that he is

a different man today. He is a different and rehabilitated man today than he was when he committed these crimes and when he was when he stood before Judge Cooper [which was also subsequent to Yamada's testimony at appellants' trial]." (A33)

"We have a different man before this Court today than the man who wrote those letters" [which was subsequent to Yamada's testimony at appellants' trial]. (A40).

"[H]e is a different man than what he was when he submitted those letters to the Court [W]e have a man that is contrite and rehabilitated." (A44)

Indeed, the Government's own sentencing memorandum submitted to Judge Lasker indicated the Government's recognition of the absolute falsity of Yamada's alleged reformation and contrition as of the time Yamada testified at appellants' trial. As the Government's memorandum stated:

"[T]he fraud perpetrated by Yamada upon the Court represents the antithesis of cooperation or of genuine contrition for his past fraudulent activities [T]he fraud set forth above was anything but a frenzied last-minute act of panic. It was a calculated, well-thought out plan to deceive the court." (A62)

"In submitting the fraudulent letters to Judge Cooper, Yamada demonstrated convincingly that he fully expected to manipulate the Court, just as he had previously manipulated the

victims of his financial frauds."* (A65).

"With respect to a defendant who holds himself out as a contrite cooperating witness, it is especially intolerable." (A66)

Thus, the District Court, Yamada's counsel (in Yamada's presence), and the Government itself have all recognized that Yamada, previous to his crimes before Judge Cooper--and including the time of his testimony against appellants--held himself out as a repentant, contrite man ready to atone for his past crimes and worthy of credibility, and that this has been demonstrated beyond doubt to be completely false. Under these circumstances, it is respectfully submitted that Yamada's acts subsequent to his trial testimony can in no significant sense be regarded as cumulative to his other crimes, as each of those other crimes was committed prior to his purported reformation, and there was no evidence available or introduced at trial to indicate that his contrition was, as it has subsequently been exposed to have been, a total fraud.

* In this regard, there is a noteworthy similarity between Yamada's testimony at trial that "I agreed to tell the whole truth I was going to start anew and start a new life" (T. Tr. 1577) with his statement to Judge Lasker, at the time he entered guilty pleas to six counts, that "I am pleading guilty because I was guilty of these crimes and that I would like to clear the slate." (A27).

Most significant in this case is the presence of another factor absent in Mesarosh: the relationship between the allegations in Yamada's new indictment and the issues of motivation and credibility presented by his testimony at trial. The key issue for the jury at appellants' trial, in evaluating Yamada's credibility, was the extent to which Yamada would lie in order to alleviate his own punishment, and the extent to which he had finally decided, in the words spoken by Government counsel to the jury, to "step forward and s[ay] 'I did these things, and I want to pay for these things'" (T.Tr. 58). His recent conviction totally discredits Yamada, refutes the notion that he had turned over a new leaf, belies the assertion that he was worthy of credibility, and demonstrates in a manner previously unavailable the extent of his desperation and the outrageous extent to which Yamada would create a total fiction out of thin air in order to reduce his own punishment. All of these factors, absent in Mesarosh, indicate most strongly that the result mandated by the Supreme Court in Mesarosh is equally mandated here.

Moreover, it is respectfully submitted that the Government, in its sentencing memorandum before Judge Lasker, has itself conceded that the evidence of Yamada's new crimes,

if it had been available and introduced at appellants' trial, would not have been merely "cumulative" to evidence of Yamada's other previous crimes. In the Government's sentencing memorandum to Judge Lasker, the Government stated:

"[T]he fraud perpetrated by Yamada has substantially vitiated his usefulness as a Government witness in any future prosecutions." (A61)

This was also recognized by Judge Lasker himself, who stated at Yamada's sentencing:

"it is going to make Mr. Yamada himself less useful as a witness than he would have been otherwise." (A37)

If Yamada's newest crimes were merely "cumulative", it is difficult to see how his usefulness as a Government witness would be so severely impaired by his new crimes.

In addition, Yamada's scheme before Judge Cooper precisely paralleled what appellants Zane and Silverman argued was his scheme against them. The Government, in its sentencing memorandum, set forth at length certain comments made by Judge Cooper in imposing the original sentence upon Yamada. Judge Cooper, in imposing the original sentence upon Yamada, stated to Yamada that a significant factor which Judge Cooper felt justified a two-year sentence was the fact that no testimonials had been presented to the Court on Yamada's behalf with respect

to sentencing. Judge Cooper stated to Yamada:

"[T]here are not testimonials such as was present yesterday [in a different case then pending before Judge Cooper] of moral deportment over a substantial period of time that came to stand besides those who had to stand sentencing yesterday. You haven't got them. They are not here. I can't look to a Yamada who did things of quality, who lent aid to those who were suffering; who dedicated a period of time to uplift the neglected, the tormented. Absent." (A54)

The Government in its sentencing memorandum before Judge Lasker pointed out that in view of Judge Cooper's comments, Yamada "decided to concoct evidence of such charity in order to persuade Judge Cooper to reduce the two-year sentence." (A55).

The Government further stated in its sentencing memorandum that Yamada's "letters betray a deliberate effort to fabricate information which Yamada knew would commend themselves to Judge Cooper's attention." (A56).

The Government's argument to Judge Lasker regarding Yamada's fabrications in order to satisfy what Yamada felt was a need to supply testimony where none existed was exactly the position taken by appellants Zane and Silverman at trial. Based upon Yamada's testimony before the S.E.C. and Exhibit Q (which was excluded from evidence by the trial Court and which this Court held to be harmless error--see Slip. Op. pp. 2514-

2515), it was appellants' position that Yamada's testimony with respect to Microthermal was simply his attempt to broaden the scope of his "cooperation" with the Government in order to get the best possible deal for himself. In short, appellants' position was that Yamada had testified truthfully before the S.E.C. with respect to Microthermal, and was committing perjury at trial--not, as Yamada claimed at trial, vice-versa. It is significant that Yamada himself admitted that he had not made his deal with the Government until mid-1972; that he knew, as of the time he made his deal, that Galanis had already accused two accountants named Zane and Silverman of participation in the Microthermal conspiracy; that by virtue of having been served with an S.E.C. civil complaint which detailed, among other things, the alleged Microthermal conspiracy, Yamada knew of the alleged role which Galanis had ascribed to Zane and Silverman in Galanis' conversations with the S.E.C. attorneys (T. Tr. 1607-1610).

Thus, Yamada's lies to Judge Cooper, which the Government characterized as an attempt to supply false evidence where Yamada felt it could be helpful to him personally, were of extraordinary relevance to the position urged by Zane and Silverman at trial as to the depths of Yamada's motivation to

supply false testimony and invent false relationships and non-existent events in order to fill what Yamada perceived as a vacuum.

This is not simply a case where a defendant presents a purported recantation by a Government witness; rather, a grand jury, Yamada, and the prosecution have all branded Yamada as a liar. In Mesarosh, of course, it was the Solicitor General who brought to the Court's attention the newly discovered facts concerning the Government witness, whereas in this case these facts were brought to the Court's attention by defense rather than Government counsel. This is a distinction without a difference, however, as the factor of significance is that the statement of the witness' incredibility and deceit has been made by the Government itself, through its prosecution, and through Yamada's plea of guilty. See United States v. Chisum, 436 F.2d 645 (9th Cir. 1971)

In view of these circumstances, it is respectfully submitted that Zane and Silverman are entitled to a new trial. Cf. Communist Party v. Subversive Activities Control Board, 351 U.S. 115 (1956); United States v. Gordon, 246 F.Supp. 522 (D.C.D.C. 1965). Yamada's most recent crimes cast substantial

doubt on the validity of the conviction of Zane and Silverman on the one count apiece (out of thirteen charged) upon which they were found guilty.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments of conviction against appellants Zane and Silverman on Count 2 should be reversed, and a new trial on Count 2 should be ordered.

Respectfully submitted,

Louis Bender /*LB*

LOUIS BENDER

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SANDOR FRANKEL,
Of Counsel

